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Supreme Court of the United States

OCTOBER TERM, 1974.

No. 74-798

THE LITTLESTONE COMPANY, AN ILLINOIS CORPORATION, JULIUS OSTROM AND ESTELLE H. OSTROM, HIS WIFE,
Petitioners,

vs.

THE COUNTY OF COOK, A BODY POLITIC AND CORPORATE, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT, FIRST DISTRICT (FIFTH DIVISION).

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Petitioners,

vs.

THE COUNTY OF COOK, A BODY POLITIC AND CORPORATE, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT, FIRST DISTRICT (FIFTH DIVISION).

Littlestone Company, an Illinois corporation, Julius Ostrom and Estelle H. Ostrom, his wife, petition for a writ of certiorari to review the decision of the Illinois Appellate Court, First District (Fifth Division), entered on April 11, 1974.

OPINIONS BELOW.

The Illinois Appellate Court decision is reported in 19 Ill. App. 3d 222, and is reprinted in full as Appendix A to this petition. The order of the Illinois Supreme Court denying leave to appeal was entered on Septemeber 27, 1974; a copy of the notice of said denial is reprinted in full as Appendix B to this petition.

JURISDICTION.

Jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3); this petition for writ of certiorari having been filed in accordance with 28 U. S. C. § 2101(c) within 90 days of the entry of the order of the Illinois Supreme Court denying leave to appeal.

QUESTIONS PRESENTED.

Does the Zoning Ordinance of the County of Cook, State of Illinois, as applied to petitioners' property, deny the petitioners due process of law and equal protection of the laws by including the petitioners' property in an admittedly invalid residential classification and in denying petitioners the right to develop their property as a general service planned development, consisting of three five-story office buildings, a six-story motel, and a lake?

CONSTITUTIONAL AMENDMENTS AND ORDINANCES INVOLVED.

1. Constitution of the United States.

A. AMENDMENT V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

B. AMENDMENT XIV, SECTION 1.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens

of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Constitution of the State of Illinois.

   A. ARTICLE I, SECTION 2.

      § 2. Due Process and Equal Protection.

      No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

   B. ARTICLE I, SECTION 15.

      § 15. Right of Eminent Domain.

      Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

3. Cook County Zoning Ordinance

   A. SECTION 8.3-3 PERMITTED USES—R-3 District, p. 41A.

   B. SECTION 8.3-1 PERMITTED USES—R-1 District, pp. 41A, 42A.

   C. SECTION 9.3-4 PERMITTED USES—B-4 District, pp. 95A, 97A, 99A.

   D. SECTION 9.4-4 SPECIAL USES—B-4 District, p. 101A.

   E. SECTION 9.4-1 SPECIAL USES—B-1 District, p. 100A.

Due to the length of the foregoing sections of the Cook County Zoning Ordinance, they are reprinted in full as Appendix C to this petition.

STATEMENT OF THE CASE.

The petitioners, Julius Ostrom and Estelle H. Ostrom, are the owners of certain real property consisting of approximately 17.95 acres, located at the northwest corner of Willow Road and Landwehr Road in Northfield Township, Cook County, Illinois. Petitioners made application to the Zoning Board of Appeals of Cook County, Illinois, to reclassify the subject property from the R-3 Single-Family Residence District to the B-4 General Service District with a special use for a general service planned development consisting of three office buildings, a motel and a lake. Upon the recommendation of the Zoning Board of Appeals, the Board of Commissioners of Cook County denied petitioners' application.

Petitioners commenced a declaratory judgment action against the defendant, County of Cook, in the Circuit Court of Cook County, Illinois, to declare the Cook County Zoning Ordinance unconstitutional as it applied to their property and as it prevented their proposed special use for a planned development, and for other relief as prayed. A copy of petitioners' complaint is reprinted in full as Appendix D to this petition. The County answered the complaint; and after being granted leave to intervene, the Villages of Northbrook and Glenview, Allstate Insurance Company, Paul Walsh, Benjamin Harris, George W. Drymalski, and Cecile J. Drymalski also answered.

The subject property is improved only with the single-family home of the petitioners, Julius Ostrom and Estelle H. Ostrom, and is contiguous to another vacant 38-acre tract and lies in the northeast quadrant of the intersection of Willow Road and the Tri-State Tollroad. The existing R-3 classification of the subject property was admitted at the trial to be unreasonable by witnesses for the respondents. The character of the intersections of Willow Road and the Tollroad, and Willow Road and Landwehr Road has changed substantially since the Ostroms

acquired their property in 1959. The subject property is part of a tract of land lying east of the Tollroad, both north and south of Willow Road, which contains only four dwelling units on approximately 100 acres.

Comparable property on the west side of the Tollroad intersection was rezoned by the County of Cook from a single-family classification to business and manufacturing uses adjacent to single-family dwellings; the area to the west of the Tollroad is in the same relative position as the subject property and has undergone substantial and intensive development as the site of the headquarters building for the Allstate Insurance Company, the A. C. Nielson Company, a manufacturing use for the Culligan Water Softener Company, and an extensive office development for the Illinois Bell Telephone Company.

Willow Road is a major east-west arterial with a 50 mile per hour speed limit. It is a four-lane divided facility with a volume of approximately 24,000 cars per day.

The physical attributes of the subject property and the nearby land uses are shown on the land use and zoning map reprinted in full as Appendix E to this petition.

Experts for the petitioners and respondent valued the subject property as worth from $250,000 to $450,000 under the existing zoning classification. The value of the subject property for the proposed use was established at from $690,000 to in excess of $700,000.

The Circuit Court of Cook County, after a bench trial, declared the Zoning Ordinance to be unconstitutional as applied to the subject property, insofar as it prevented the use of the petitioners' property as prayed. The County was enjoined from enforcing its Zoning Ordinance and directed to issue necessary permits. A copy of the final judgment order of the Circuit Court of Cook County is reprinted in full as Appendix F to this petition.

The County of Cook, the Villages of Northbrook and Glenview, and George and Cecile Drymalski, appealed to the Appellate Court of Illinois. The Illinois Appellate Court reversed the judgment of the Circuit Court of Cook County on April 11, 1974.

The petitioners petitioned the Supreme Court of Illinois for leave to appeal the judgment of the Appellate Court of Illinois. On September 27, 1974, the Supreme Court of Illinois denied said petition.

REASONS WHY THE WRIT SHOULD BE GRANTED.

I.

The Decision Conflicts with This Court's Holding in Nectow v. City of Cambridge, 277 U. S. 183, 72 L. Ed. 842, 48 S. Ct. 447, and Other Decisions of This Court and Is Not Required to Protect the Public Interest.

This Court, while upholding the general scope of zoning ordinances, has expressly limited its approval to those restrictions "which bear a substantial relation to the public health, safety, morals or general welfare." *Nectow* v. *City of Cambridge*, 277 U. S. 183, 72 L. Ed. 842, 48 S. Ct. 447; *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 71 L. Ed. 303, 47 S. Ct. 114. In *Nectow* v. *City of Cambridge*, a zoning ordinance of the City of Cambridge was attacked as being unconstitutional as applied to the plaintiff's property. The case was referred to a master to make and report findings of fact. The master's report concluded that the districting of the plaintiffs' land in a residence district would not promote the health, safety, convenience and general welfare of the inhabitants of that part of the City, taking into account the natural development thereof, and the character of the district, and the resulting benefit to accrue to the whole city. Notwithstanding the master's report, the state court

sustained the ordinance as applied to the plaintiff and dismissed his complaint.*

Here, like the master in the *Nectow* case, the Circuit Court of Cook County, Illinois, expressly found that the highest and best use of the subject property was for the general service planned development of the type and character proposed to be erected by the petitioners; the Court also found that the Zoning Ordinance of the County of Cook, as applied to the subject property, insofar as it prevents the use of the subject property for a general service planned development, is unreasonable, arbitrary, confiscatory, unconstitutional and void, and bears no reasonable relationship to the public health, safety, morals and welfare. The trial court further found that the proposed use, as indicated by the petitioners, is a reasonable use of the subject property and may be permitted.

This Court has held that an unnecessary or unreasonable restriction may not be imposed upon property rights. *State of Washington ex rel. Seattle Title Trust Co.* v. *Roberge*, 278 U. S. 116, 73 L. Ed. 210, 49 S. Ct. 50. Here, the subject property as presently zoned has remained vacant for a long period of time. Zoning similar to that requested by the petitioners has been granted in the vicinity of the subject property and the ordinance of the County of Cook has been declared unconstitutional in a similar case decided contemperaneously with this case involving similar property a half mile from the subject property and west of the same Toll road interchange. *Hutson* v. *County of Cook*, 17 Ill. App. 3d 195. The highest and best use of the subject property has been determined by the trier of fact to be consistent with the petitioners' planned development based upon the testimony of expert witnesses.

A substantial relationship to the public health, safety, morals or general welfare is required to support the interference by a

* This Court reversed the decision of the State Court and found the ordinance unconstitutional as applied to the property of the plaintiff in error.

zoning regulation in the general rights of a landowner. *Euclid* v. *Ambler Realty Co., supra,* p. 395. No such relationship was shown by the respondents.

In overturning the decision of the trial court, the Appellate Court of the State of Illinois emphasized the possible depreciation in value to nearby residential properties. This Court has held that the depreciation in value of neighboring property is not a sufficient reason to justify an ordinance interfering with property rights. *Buchanan* v. *Warley,* 245 U. S. 60, 62 L. Ed. 149, 38 S. Ct. 16; *State of Washington ex rel. Seattle Title Trust Co.* v. *Roberge,* 278 U. S. 116, 49 S. Ct. 50, 73 L. Ed. 210.

The question before this Court is whether the plaintiffs' property, lying east of the Tollroad with the first access on heavily traveled Willow Road, is to continue to be vacant and unused in the interest of preserving an illusory single-family classification which benefits no one but substantially reduces the value of the property and deprives the community of a needed facility and a substantial tax base. The evidence in the record clearly supports the finding of the trial court that the present zoning restriction bears no reasonable relationship to the public health, safety and welfare. The trial court specifically found that the highest and best use of the subject property was for the use proposed and that the zoning ordinance was unconstitutional and void insofar as it prevented the use of the subject property for such purpose. There is an admitted substantial loss in value to the property owner without any demonstrable benefit to the public.

Despite the testimony of witnesses for the respondent that the present classification is unreasonable, the Appellate Court of Illinois relied upon what those witnesses described as the residential character of the area surrounding the subject property. Yet, an examination of the use map clearly indicates that the so-called "residential" character of the area is highly illusory. If one considers the subject property with its one single-family residence located on the northwest corner of Landwehr and Willow Road,

the 38-acre property lying immediately to the west of the subject property and abutting the Tollroad, as well as the land lying south of Willow Road, west of Landwehr which contains three single-family dwellings well set back from Willow Road on large lots and the vacant property lying south of the single-family homes, it must be conceded that the property in question is not residential but is almost completely vacant.

The subject property is in all respects similar to the character of the property lying west of the Tollroad intersection. The respondents' own witnesses conceded that in 1961 the property to the west of the Tollroad, including the Allstate property and the A. C. Nielsen property, was also zoned single-family, but that the entire area was rezoned for office research and manufacturing use. The respondents' witnesses also testified that Allstate and A. C. Nielsen were across the street from single-family residences which were built after extensive commercial developments were established. The record is clear that shortly before the trial of the cause below, the intersection of Willow Road and the Tri-State Tollway was extensively improved in recognition of the increased traffic volume to be served. The record demonstrates that Culligan, like A. C. Nielsen and Allstate, received its change in zoning from a single-family classification at a time when there was only a half interchange of Willow and the Tri-State.

The law is of course well established that there must not be discriminatory zoning action as between properties similarly situated.

The respondents' suggested to the State Court that the plaintiffs assumed the burden of proving not only that the existing classification was void, but also that the proposed use was reasonable. We agree that such was the burden of the plaintiffs in this case. Based upon the evidence adduced, the trial court specifically found that the proposed use was reasonable and, in fact, the highest and best use, and further specifically found that not only the existing R-3 classification was invalid, but that

the R-4, R-5, R-6, B-1, B-2 and B-3 classifications would also be unreasonable and void as applied to the subject property.

Therefore it is clear that the Cook County Zoning Ordinance as applied to petitioners' property constitutes unreasonable interference with the petitioners' property rights in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States and Article I of the Constitution of the State of Illinois.

CONCLUSION.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

OPINION OF APPELLATE COURT, FIRST DISTRICT.

57892 THE LITTLESTONE COMPANY, an Illinois corporation, et al., *Plaintiffs-Appellees,* *vs.* THE COUNTY OF COOK, a body politic and corporate, *Defendant-Appellant.*	Appeal from Circuit Court of Cook County. Honorable Edward F. Healy, Presiding.

MR. JUSTICE DRUCKER delivered the opinion of the court:

The plaintiffs, Littlestone Company, Julius Ostrom and Estelle H. Ostrom, commenced this suit against defendant, County of Cook, for a declaratory judgment to declare the Cook County zoning ordinance unconstitutional as it applied to their property and as it prevented their proposed special use for a planned development and for other relief as prayed. Julius and Estelle Ostrom were the owners of the subject property and Littlestone Company was the contract purchaser.[1] The County answered the complaint, and after being granted leave to intervene, the Villages of Northbrook and Glenview, Allstate Insurance Company, Paul Walsh, Benjamin Harris, George W. Drymalski and Cecil J. Drymalski also answered. The circuit court after a bench trial declared[2] the zoning ordinance to be

1. Littlestone's obligation to purchase the property was subject to a successful application for rezoning.

2. The final judgment order, in pertinent part, recites:
"That the highest and best use of the subject property is for the general service planned development of the type and

(Footnote continued on next page)

unconstitutional as applied to the subject property insofar as it prevented the use of the plaintiffs' property as prayed. The County was enjoined from enforcing its zoning ordinance and directed to issue necessary permits. The County, Villages of Northbrook and Glenview and George and Cecil Drymalski (collectively referred to as defendants) appeal.

Defendants contend: (1) the trial court erred in striking the valuation testimony of the County's real estate appraiser; (2) the plaintiffs failed to sustain their burden of proving that the County acted arbitrarily and unreasonably in refusing to rezone the subject property to permit the plaintiffs' proposed use; and (3) the trial court erred in refusing to permit counsel for the intervenor-defendants to cross-examine plaintiffs' witnesses.

* * * * *

The subject property is a certain tract of land located on the northeast corner of the intersection of Landwehr Road and Willow Road in the unincorporated area of Northfield Township in Cook County. The property is L-shaped and consists of approximately 17.9 acres. It has frontage of 1,144 feet on the north side of Willow Road and frontage of 255 feet on the west side of Landwehr Road. On the corner of the subject

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character proposed to be erected by the plaintiffs as hereinabove described.

"That the Zoning Ordinance of the County of Cook as applied to the subject property, insofar as it prevents the use of the subject property for a general service planned development, is unreasonable, arbitrary, confiscatory, unconstitutional and void and bears no reasonable relationship to the public health, safety, morals and welfare.

"That the proposed use of a general service planned development, providing for three (3) office buildings and a motel with a swimming pool and restaurant facilities, as indicated on the plans submitted to this court, is a reasonable use of the subject property and may be permitted.

"That the application of the provisions of the Cook County Zoning Ordinance contained in the R-3, R-4, R-5, R-6 and B-1, B-2 and B-3 Districts would be unreasonable, arbitrary, confiscatory, unconstitutional and void."

property, at the intersection of Willow and Landwehr Roads, is a single family residence owned by the plaintiffs, Julius and Estelle Ostrom. The remainder of the parcel is vacant.

The subject property lies along the north side of Willow Road and the west side of Landwehr Road, 500 feet east of the Tri-State Tollway. There is one vacant tract of land (Bernstein's property) of approximately 38 acres on the west side of the subject property, which separates the subject property from the Tri-State Tollway. Bernstein's property does not have access to Willow Road.

Immediately to the north of the eastern extremity of the subject property is an 11 acre tract owned by the intervenors Drymalski which is improved with one single family home. To the immediate north of and touching the western portion of the subject property is the Landwehr Estates development which is a single family residential development on half acre lots. To the northwest is a single family community known as Citation Lake Estates which has been in the process of development for the past eight or nine years. To the east and south of the subject property are a number of other single family developments including the Stonehedge subdivision, located west of Pfingsten Road on Willow, and the Willows East and Willows West single family developments located southeast of the subject property. There are various single family homes directly east of the subject property on Landwehr Road. To the south of the subject property on the south side of Willow Road there are three single family homes. The above described property is either zoned R-3 (minimum lot size of 20,000 square feet) or R-4 (single family residential with a minimum lot size of 10,000 square feet).

The area to the west of the tollway on both sides of Willow Road has been zoned and developed primarily for office and research purposes. Included in this area is the Allstate Insurance Company and the A. C. Nielson office complex which have been classified for B-3 (General Business) purposes and lie

south of Willow Road between Sanders Road on the west and the tollway on the east. Fronting on the north side of Willow Road is the Culligan Water Softener Company on a substantial tract zoned for M-1 (Restricted Manufacturing) purposes and abutting the tollway. North of Culligan is the headquarters of the Illinois Bell Telephone Company on a tract classified for B-4 purposes, also abutting the tollway. East of Sanders Road and adjacent to Illinois Bell Telephone Company are the Coach House Stables zoned for B-5 (General Commercial) and the Sunset View Farm which is a commercial nursery.

Willow Road is a major east-west arterial with a 50 m.p.h. speed limit. It is a four lane divided facility with a volume of approximately 24,000 cars a day. The intersection of Willow and the Tri-State Tollway has been characterized as a half-clover-leaf: cars going north may exit east and west on Willow, but cars going south have no exits onto Willow, and cars traveling on Willow may enter the tollway going south but cannot enter the tollway going north. Landwehr Road is a north-south two lane collector road with an average daily volume of 4,000 cars. The intersection of Willow and Landwehr Roads has recently been improved to provide operating channelized left-turn lanes for all four legs, and the intersection is signalized.

The Ostroms have entered into a contract to sell the tract to the Littlestone Company for a total purchase price of $220,000. The Ostroms purchased the subject property in February 1959 from the intervenor-defendants, George and Cecil Drymalski, for $59,000. The subject property is classified in the R-3 Single Family Zoning District of Cook County in which the minimum lot size is 20,000 square feet.

The plaintiffs propose to improve the subject property with what is designated as a general service planned development, consisting of three five-story office buildings, a six-story motel, and a lake. Each of the office buildings will contain approximately 80,000 square feet. The hotel-motel will contain 201

rooms, parking for 1400 cars, and the lake will be slightly less than two acres. The office buildings are 62 feet high and the motel is approximately 59 feet high.

Between the subject property and the single family property to the north there is proposed to be erected a 20 foot berm five feet high. On top of the berm will be a six foot high fence, and along the berm will be planted six inch trees. Two entrances will be provided to the development on Willow Road and one entrance on Landwehr Road. There will be lighting in the parking area of approximately three foot candles per acre, which is typical of a shopping area. After 10:00 P.M. lighting in the parking area will be curtailed and consist only of security lighting.

The plaintiffs applied for a rezoning to B-4 General Service District, with a special use for a planned development, to permit the construction of the proposed use as hereinabove described. While office uses are permitted under the B-3 classification, the hotel or motel would be permitted only under the B-4 classification. After public hearings, the Zoning Board of Appeals of the County recommended that the request be denied, and the Board of Commissioners concurred.

The testimony presented at trial was voluminous, and the experts conflicted on a number of point. The following is a summary of the testimony of the various witnesses.

Richard Barancik, an architect and an investor in the proposed development, testified as a witness for plaintiffs as follows: He characterized the natural boundaries of the area as Landwehr Road on the east and Sanders Road on the west. He believed the proposed development is a needed use because of the character of the neighbors to the west, across the tollway. The motel and office buildings will complement each other; the motel will be open all night. The character of the land to the east, north and south is strictly single family residential. There is single family building construction going on in Citation

Lakes Estates with the value of these homes being approximately $60,000 and up. He admitted that the architectural design of the proposed development is not residential in character. The project would have no adverse effect upon the surrounding single family residences, and yet he noted that Drymalski's property will depreciate somewhat. The people to the north would see very little of the buildings.

Rolf C. Campbell, a city planning and zoning consultant, testified as a witness for plaintiffs as follows: The Tri-State tollway and its interchange with Willow Road establish the character for the four quadrants, all carrying office research characteristics. The single family developments to the north, east and south have minimal effect on the character of the subject property, although the trend of development within a one mile radius east of the tollway is primarily residential, and most of the buildings in Citation Lakes Estates has occurred in the last five years.

He felt the highest and best use of the subject property would be for office research with supporting facilities, i.e., a motel. This would give the school district a substantial base and would give the owners the highest return on their investment. He believed there is a need for the office buildings and motel although he personally made no studies of this. R-3 and R-4 zoning are not suitable because orderly single family development is not possible although single family homes can be physically built on the site. R-5, R-6 and B-1 are suitable uses for the property but are not the highest and best use. A B-2 zoning classification is bad because of access problems; B-3 is logical, but he felt B-4 is the highest and best use since a motel is not allowed under a B-3 classification.

There are many situations where office research is located next to, adjacent or across the street from single family homes. The proposed project will have no adverse effect on orderly development. There will be some minimal adverse effect on the

homes to the north. There will be no effect on properties east of Landwehr Road. There will be a nominal effect on Drymalski's property. Bernstein's property should be rezoned and so should property to the south of Willow Road.

Major arteries like the tollway are not good zoning dividers. They are means that provide the service to a place where you get on and off an interchange. It does not divide properties on either side of them but ties them together as a service facility.

F. Gregory Opelka, a professional appraiser of real property, testified as a witness for plaintiffs: The area is characterized as very dynamic and rapidly growing. The subject property gets its character from uses west of the tollway. The proposed development represents the highest and best use for the subject property due to the general activity of the area, road traffic, noise, an increase in traffic from the tollway, the intersection with its accompanying stop lights and the redevelopment of single family homes in the area suggesting a need for jobs and shopping. The present classification as well as the intervening classifications are unsuitable for the subject property. The R-3, R-4 and R-6 classifications are undesirable because of traffic and car pollution, and the B-1 and B-2 classifications are unsuitable. The motel is a complementing use with the modern office facilities.

He valued the property under R-3 as being worth $225,000 under R-4, at approximately $10,000 to $20,000 per acre, and with the development as being worth $40,000 per acre. He valued the homes in Citation Lake Estates between $75,000 and $125,000 and the homes in Landwehr Estates from $55,000 to $70,000. The project would be compatible with Drymalski's property and Citation Lakes Estates. He found that there would be very little or no effect on any of the single family homes in the surrounding area. Traffic from the development would not be introduced into the surrounding housing developments. He did admit that the detrimental effects from traffic would be less under R-4 than under B-4 classification.

Neil Kennig, a traffic engineer, testified as a witness for plaintiffs: He made an analysis of the traffic impact of the development. The present thoroughfare adjacent to the subject site would be adequate for the traffic that would be generated by the proposed development. He found a more than adequate number of gaps for cars turning into and out of the complex. Also, there would be no adverse effect on Willow or Landwehr Roads.

George F. Heck, a water engineer, testified as a witness for plaintiffs: The wells proposed are quite adequate to serve the project's needs. Further, the recommendations he has made to supply water for the sanitary sewer and storm water retention facilities together with the fire fighting design are adequate and capable of servicing this development.

Cecil Drymalski, an intervenor-defendant, testified as a witness for defendants: With her husband, they originally owned the subject property which they sold to the Ostroms in 1959 for $59,000. She objects to the project because of the noise and traffic which will be introduced into the area. When they bought their property, also in 1959, the tollway was not built, Willow Road was narrower, as was Landwehr Road, and the traffic signals had not been put in.

Leo J. Wilkie, a transportation engineer, testified as a witness for defendants: He also made a study of the traffic impact of the proposed development, including volume and gap counts. He found that Willow Road at the farthest westerly entrance to the subject site has a mountable median, thus allowing left turn movements out of and into the site, where only right turn movements are proposed. From his gap study he concluded there would not be enough gaps to accommodate out-going and in-coming traffic. Thus, traffic on Willow Road will be dangerous with backups leading beyond the exits and entrances to the tollway. The effect of insufficient gaps will be to have more cars exit from Landwehr Road, which in turn will hold up Willow Road traffic. He found plaintiff's experts' traffic estimates and figures to be about 20% low. He noted a similar backup

occurrence now exists on Sanders Road, west of the tollway. If the entrances were signalized, a beneficial change could be effected.

Thompson A. Dyke, a city planning consultant, testified as a witness for defendants: The subject property takes its character from the land uses immediately adjacent to it. For the most part these are single family uses. The trend of development is reflected in the Citation Lakes Estates, Landwehr Estates, Willow East and Willows West and the subdivisions east of the subject property. He found an R-4 classification as the highest and best use for the subject property and that a subdivision similar to these other subdivisions could be developed on the site.

The proposed development is not suitable for the subject property. It would cut off the residential pattern that has been established in this area bounded by Willow Road, Landwehr Road, the Tri-State Tollway, and Techny Road, on the north. The development would also cut off local street patterns. In terms of intensity of use, the development is drastically different from existing uses which are already adjacent to the subject property. Finally, the development will radically affect the character of the vacant land in the surrounding area, including Bernstein's property.

In a study of the area he found no need for the proposed uses at this location. The tollway forms a natural barrier between land uses; a study of similar half-clover leaf interchanges shows development patterns with a separation of land uses. He did note that if a full interchange existed, the proposed development would be a sensible use of the subject property.

Ralph Martin, a real estate appraiser, testified as a witness for defendants: He made a study of the value of homes in the surrounding area and found the homes in Landwehr Estates range between $70,000 and $90,000; the homes in Citation Lakes Estates range between $80,000 and $110,000; the homes north of Drymalski's property are approximately $75,000; the homes east of Landwehr Road range between $50,000 and

$75,000; and in the Willows developments between $50,000 and $75,000. He also valued Drymalski's property at about $250,000. The value of the subject property under R-3 would be $450,000, under R-4 would be $480,000 and under B-4 would be $690,000.

The subject property is suitable for the purpose for which it is now zoned. It takes its character from the residential developments to the north, east and southeast. Planning indicates continued subdivision development. Landwehr Estates is immediately north of the subject property and could be extended into the subject property. This would be the highest and best use, especially because of the predominance of single family residences being built in the area, the continuous subdividing of vacant parcels which are east of the tollway, and the demand for single family homes in the area. The subject property does not take its character from the commercial development to the west.

The proposed development would be detrimental to the surrounding residential use. The depreciation that would result from the development to the surrounding areas would be: 10% to the properties in Landwehr Estates that abut the subject property 20% to Drymalski's property; as high as 10% to the homes south of Willow Road; as high as 20% on residences directly east of Landwehr Road; and as high as 10% to homes in Citation Lakes Estates. Some factors that account for this depreciatory effect are the desire of people to live in areas that are strictly residential, the height of the proposed buildings, the intensity of the proposed use, the development not being compatible with residential development, and the office buildings not being screened so that people in these buildings can look down on the surrounding property. He estimated this total depreciatory effect at about $500,000. With this development the character of the surrounding area will be substantially changed.

Although the trend of development has been in the R-3 or R-4 classifications, there are no new homes "fronting," or

facing, Willow Road. Willow Road is not an ideal single family street. He would have the back of the homes face Willow Road.

During direct and cross-examination of Martin it was brought out that he has been in business for 15 years and has an office in Des Plaines just three miles west of the subject property. He has made half a dozen appraisals within a one-half mile radius of this area, including homes in Citation Lakes Estates. He has actively participated in a sale of property one mile to the west on Willow Road. Furthermore, plaintiffs stipulated as to Martin's qualifications, his familiarity with the subject property and with the surrounding area.

During redirect examination of Martin the following colloquy took place:

> "Q. Mr. Martin, have you made any appraisals of property in this area?
>
> A. Yes, I have.
>
> Q. How many?
>
> A. Half-a-dozen appraisals within a half mile radius of this area.
>
> Q. Is it essential to go in every home Mr. Martin before you give a range of the values of the homes?
>
> A. I usually call in the brokers in the Evanston or Northshore area.
>
> Mr. DALEY: I move his entire testimony be stricken, as to values be stricken because its hearsay."

The trial court subsequently struck the witness' valuation testimony as hearsay.

Thomas J. Buckley, a city planning and zoning consultant, testified as a witness for defendants: The trend of development is twofold: (a) east of the tollway is entirely single family within a one mile radius, and (b) west of the tollway are large sites and office development characterized as mixed residential and commercial. The subject property is located in a very fine residential neighborhood and derives its character principally from the residential areas which about directly to the north, east and south. The subject property does not take its character

from the commercial property to the west which is separated completely by the tollway. A tollway is a proper and adequate buffer or divider for land use.

The highest and best use for the subject property is an R-4 classification due to the topography because the residential street could be extended south into the property, the compatibility with property to the north, the minimal effect on Willow Road traffic and the general trend of development. R-3 is not the highest and best use.

The proposed development is completely incompatible with the existing type of development in the area. The proposed uses are too intensive. It will have a serious detrimental effect on the residential properties. The commercial activity, lighting, intensity of use, excessive traffic generation, physical appearance of the facility and large paved asphalt area would completely disrupt and be out of harmony with the immediately abutting residential properties. The proposed development would change the character of the surrounding property. The surrounding area would have to be developed with commercial or multiple family uses. The different character would also affect the homes to the northeast and southeast of the Landwehr Road, Willow Road intersection. The development would also slow down traffic on a majority artery, i.e., Willow Road.

Paul C. Box, a consulting engineer, testified as a witness for plaintiffs in rebuttal: The day before he testified he made a study of the traffic impact of the development. The road network is capable, with proper site improvements, of handling the estimated volume of traffic. He found at the present time, without any changes, there are sufficient gaps to take care of the right turn exists on Willow Road, but there are inadequate gaps during the evening rush hour across the two-way traffic flow of Willow Road to accommodate the number of cars that would be estimated to exit by left turn at the east access point. He personally made no traffic count. Also, a barrier median is needed for the west exit onto Willow Road, to make it right turn only, but no such plans exist to change the present mountable median.

OPINION

Defendants argue that the trial court erred in striking the valuation testimony of Ralph Martin, defendants' real estate appraiser and sole valuation witness. They contended that Martin's testimony regarding conversations with other brokers referred only to his usual practice and not what he did in this particular case. Defendants aver that plaintiffs had already stipulated to Martin's qualifications as an expert witness, to his familiarity with the subject property and to his familiarity with the surrounding area. They refer this court to Martin's testimony that he personally made half a dozen appraisals in the surrounding area and had actively participated in a sale of property one mile to the west on Willow Road.

Plaintiffs argue that since his testimony was based on hearsay, *Trustees of Schools* v. *Kirane*, 5 Ill. 2d 64, 124 N. E. 2d 886, controls, and this testimony was properly excluded.

In *Forest Preserve Dist.* v. *Harris T. & S. Bank*, 108 Ill. App. 2d 65, 72-73, 247 N. E. 2d 188, the court, when discussing this same issue, enunciated reasoning which we feel controls the instant case. The court stated:

> "We believe that the court erred in excluding the valuation opinions of these witnesses. It seems apparent to us from the extensive recitation of their background and qualifications and of the numerous factors stated by them to have been examined and considered in arriving at their opinions, that these witnesses were rendering an opinion based upon their background and qualifications, upon the physical characteristics of the subject property and surrounding areas, upon the use being made of surrounding properties, upon other factors affecting value, such as availability of utilities and zoning and upon the market in the area for the highest and best use determined by them. We cannot agree that these witnesses sought to give an opinion as to value based solely upon sales of which they had only hearsay knowledge. * * *

"Further, the fact that the witnesses were aware of sales in the area in which they did not participate, and that they based their opinions, in part, on this knowledge, does not render their opinions inadmissible. The trial court stated that it is proper for a witness to render an opinion of value if a witness has hearsay knowledge of other sales as a part of his background knowledge, but that it is improper to render an opinion if a witness has hearsay knowledge upon which he bases his opinion. Under this statement of the law, we conclude that the most that can be said with reference to the testimony of Collins and Fitts is that they may have included in their basis for an evaluation opinion, hearsay knowledge of other sales. The evidence certainly does not indicate that hearsay knowledge was the basis of such opinions.

"An expert valuation witness bases his opinion, in part, upon his knowledge of the market situation in the area in question. To say that his opinion, in part, is not based on this knowledge or information because it merely is a part of his general background and experience, is an exercise of pettifoggery. Even though a witness may have all of the other knowledge essential to his expertise—in that he is well trained and experienced in the factors which are important in arriving at a fair cash market value—he must base his opinion, in part, upon knowledge of the market conditions of the particular area in question. Without the latter knowledge, all of the other knowledge requisite to his expertise would still leave the witness deficient in his worth to a party, to the court, and to the jury."

Furthermore, *In Re Village of Westchester* v. *Williamson*, 61 Ill. App. 2d 25, 35, 208 N. E. 2d 879, adequately distinguished *Kirane* when the court stated:

"We believe that Kirane is limited to those cases in which the testimony is based exclusively on information obtained from conversations with others and in which the witness specifically denies any personal knowledge of real estate values in the involved or similarly situated cities. Where, as in the instant case, there is evidence that the witnesses had extensive experience in the valuation of benefits conferred by local improvements or that the witnesses

> had experience in the value of real estate in other nearby similarly situated villages, their testimony is competent and should be admitted."

It was error for the trial judge to strike Martin's valuation testimony. Since this testimony was already in the record at the time of the court's ruling, we shall proceed with this opinion as if the testimony were properly allowed in as evidence.

Defendants contend that the plaintiffs failed to sustain their burden of proving that the County acted arbitrarily and unreasonably in refusing to rezone the subject property to permit the plaintiffs' proposed use. Defendants further argue that the trial court exceeded its jurisdiction by declaring that the County's zoning classifications (R-3, R-4, R-5, R-6, B-1, B-2 and B-3) would all be unreasonable, arbitrary, confiscatory, unconstitutional and void as applied to plaintiffs' property.

The instant case is strikingly similar in its procedural posture to the recent Illinois Supreme Court case of *Schultz* v. *Village of Lisle*, 53 Ill. 2d 39, 42, 289 N. E. 2d 614. There plaintiffs filed a declaratory judgment action praying that the Village's zoning ordinance be declared void and ineffective to prevent plaintiffs from developing their property for an automobile service station, after this relief was denied by the Village Board. Between the zoning classification that applied to plaintiffs' property and the classification plaintiffs sought were several intervening classifications, as is also true of the instant case. In *Schultz* the witnesses for the Village admitted that the proper classification of the property was not for single family residences, but that the property should retain a residential classification. So too in the instant case defendants in their brief admit that their "experts agree that the R-3 classification is too restrictive and are uniform in their opinions that R-4 single family residential would be the highest and best use of the property." The court in *Schultz* then went on to state the issue before it and the standard to be applied as:

"In this case we need not reach the question of the validity of the zoning ordinance generally as it relates to plaintiffs' property. The declaratory relief sought is that the ordinance is void insofar as it prohibits the proposed use of the property for a gasoline service station. This court has held that it is appropriate to frame the decree with reference to the record before it, and the zoning ordinance may be set aside only to the extent necessary to permit the specific use proposed. [Citations omitted.]

"Although the undisputed testimony may indicate that the proper classification of plaintiffs' property is either 'B' Residence or 'C' Residence rather than 'A' Residence, we need not decide whether the zoning ordinance as it relates to plaintiffs' property is for this reason invalid because none of these three classifications permit the use of property for a gasoline service station. *The question which was presented to the trial court and which is before this court is the reasonableness of permitting the requested use of plaintiffs' property. In testing the validity of the zoning ordinance in this case we are only concerned with the validity of the ordinance insofar as it prohibits this proposed use. The general rules, of course, apply, in that the person attacking the ordinance must prove by clear and convincing evidence that the zoning ordinance is, as to him, arbitrary and unreasonable and without substantial relation to public health, safety, morals, or welfare.*" [Citations omitted.] [Emphasis supplied.]

In the instant case none of the intervening classifications permits the proposed use. Plaintiffs therefore have the same burden of overcoming the presumption of validity by clear and convincing evidence as did the plaintiffs in *Schultz*.

The general factors which a court looks to in determining the validity of a zoning ordinance have been stated time and again (see *La Salle Nat. Bank* v. *County of Cook*, 12 Ill. 2d 40, 145 N. E. 2d 65; *Hoffman* v. *City of Waukegan*, 51 Ill. App. 2d 241, 201 N. E. 2d 177) and we shall make reference to them in our discussion only as they relate to the record before us.

The evidence stands undisputed that within at least a one mile arc from north of the subject property, east and then south, the surrounding lands are either being used for residential purposes or are vacant and that all of this land is within a single family residential zoning classification. Of paramount importance in determining the validity or invalidity of the given classification is the question of whether it is in conformity with existing uses and the zoning classification of nearby property. (*Liberty National Bank* v. *City of Chicago,* 10 Ill. 2d 137, 144, 139 N. E. 2d 235.) There was much dispute among the expert witnesses as to whether the property received its character from these surrounding residential uses or from the commercial uses found west of the tollway. This question is not to be limited by the experts' opinions alone. (*Mangel & Co.* v. *Village of Wilmette,* 115 Ill. App. 2d 383, 392-393, 253 N. E. 2d 9.) The fact of newly constructed single family residences in the Citation Lake Estates Development in addition to the large number of such dwelling units already in existence, some of which abut the subject property, reflect a trend of development conforming to the existing uses and thus are strong evidence in support of the suitability of the existing zoning and a determination of the character of the area. (*Gedmin* v. *City of Chicago,* 88 Ill. App. 2d 294, 300, 232 N. E. 2d 573.) In our opinion these contiguous and nearby uses are determinative of the character of the subject property rather than the use and zoning for commercial purposes west of the tollway. *Elmhurst National Bank* v. *City of Chicago,* 22 Ill. 2d 396, 405, 176 N. E. 2d 771.

There is present in the surrounding area some acreage of vacant land. If plaintiffs were allowed to build their proposed development, one can infer from the evidence that every vacant lot in the vicinity of the commercial development would become a potential threat to owners of the surrounding residential property. (*Elmhurst National Bank* at 406.) Plaintiffs' expert proposed that with the development both Bernstein's property and the land south of Willow Road should be rezoned. It has been

stated, both by this court and the Illinois Supreme Court, "that the single-family residential character of property will not be upset because of some commercial use near or even adjoining such property." (*Jans* v. *City of Evanston*, 52 Ill. App. 2d 61, 72, 201 N. E. 2d 663.) Nor should this court upset the County's legislative determination of zoning this R-3 so that a future orderly residential development of this area would follow. *Camboni's Inc.* v. *DuPage County*, 26 Ill. 2d 427, 187 N. E. 2d 212.

"The regulation of density, as related to land use, is a legitimate object of police power." (*Exchange National Bank* v. *County of Cook*, 25 Ill. 2d 434, 441, 185 N. E. 2d 250.) Such regulations prevent congestion of population, secure quiet residence districts, expedite local transportation and facilitate the suppression of disorder, the extinguishment of fires and the enforcement of traffic and sanitary regulations, all of which have a direct bearing upon, and substantial relation to, the public health, safety, morals or general welfare of the community. (*Reskin* v. *City of Northlake*, 55 Ill. App. 184, 204 N. E. 2d 600; *Wesemann* v. *Village of La Grange Park*, 407 Ill. 81, 94 N. E. 2d 904.) It is undisputed that this development will bring into the area a large number of people. The testimony of the traffic experts varied, but defendants' expert stated that traffic congestion, at the very least, would be increased. Even Box, plaintiffs' rebuttal witness, stated there were insufficient gaps to accommodate the number of cars attempting to turn left out of the site during the evening rush hour. He also stated that a barrier median on Willow Road was needed to guarantee the proposed right turn only at the west exit, and no such plans exist to change the now existing mountable median.

The homes located in this immediate area, even using plaintiffs' experts' values, are of substantial worth. The owners of these homes have every right to rely upon the rule of law that the existing zoning regulations will not be changed unless the change is required for the public good. Nor does the fact that

some of these homes were built a number of years ago deprive these owners of their right to rely on the above rule. (*Kennedy* v. *City of Chicago*, 11 Ill. 2d 302, 142 N. E. 2d 697; *Urann* v. *Village of Hinsdale*, 30 Ill. 2d 170, 195 N. E. 2d 643.) Yet the testimony of the expert valuation witnesses suggests the possibility of some depreciation to nearby residential properties. Barancik testified that Drymalski's house would depreciate somewhat. Campbell testified there will be some minimal adverse effect on the homes to the north. Martin, defendants' expert, felt that a substantial depreciation totalling approximately one-half million dollars would be inflicted upon these homes. This possible depreciation would be the consequence of a development on which the experts disagreed as to the need, a consideration which may have motivated the legislative body to deny the proposed rezoning in the first instance. *Hoffman* v. *City of Waukegan*, 51 Ill. App. 2d 241, 201 N. E. 2d 177.

Plaintiffs have argued that the subject property's proximity to the tollway and the commercial uses to the west of the tollway, as well as its proximity to Willow Road, a conceded major traffic artery, makes the property unsuitable for residential development. It is undisputed that single family houses can be physically built on the site. There is evidence that the residential pattern to the north could be extended south into the subject site with homes erected so that they "back up" to Willow Road. In *Koplos* v. *City of Rockford*, 62 Ill. App. 2d 268, 272-273, 210 N. E. 2d 629, this same argument, that a nearby highway interchange makes the property unsuitable for single dwelling homes, was advanced and was answered by the court when it quoted from *La Salle Nat. Bank* v. *Village of Western Springs*, 30 Ill. 2d 340, 196 N. E. 2d 680 (1964), stating:

> "Many homes have been constructed adjoining tollways in metropolitan Cook County, thereby indicating that adjacent tollways with their wide rights of ways do not preclude residential development."

Admittedly there is heavy traffic on Willow Road. This in itself does not impart a commercial character to the subject property (*Seith* v. *City of Wheaton*, 89 Ill. App. 2d 446, 232 N. E. 2d 173), and although it is a factor militating against residential use, it cannot be considered conclusive. (*Elmhurst National Bank* v. *City of Chicago*, 22 Ill. 2d 396, 176 N. E. 2d 771.) Nor can the commercial uses to the west of the tollway be such as to render the zoning classification arbitrary and unreasonable. It is fundamental that zoning must begin and end somewhere, and just because property is near a boundary line would not justify rezoning. Likewise, it has been held that streets may form an appropriate boundary for zoning districts. *Bennett* v. *City of Chicago*, 24 Ill. 2d 270, 181 N. E. 2d 96.

Plaintiffs argue that their property would be worth more if zoned as prayed, and they are suffering a financial hardship due to the present zoning classification. They also place great emphasis on the fact that the subject property, excluding the single family residence of the Ostroms, has been vacant for some length of time. It is uncontested that plaintiffs' property would be worth more if a less restrictive zoning classification were applied to it. This fact alone cannot be conclusive for it exists in nearly every case where the intensity with which property may be used is restricted by zoning classifications. (*Liberty National Bank* v. *City of Chicago*, 10 Ill. 2d 137, 139 N. E. 2d 235.) The length of time property lies vacant under a given zoning classification certainly is a factor to be considered (*Lakeland Bluff, Inc.* v. *County of Will*, 114 Ill. App. 2d 267, 252 N. E. 2d 765), but under the record before us where no evidence was presented on whether any attempts were made to sell this property for residential purposes, we find little merit to plaintiffs' argument. *La Salle National Bank* v. *City of Chicago*, 4 Ill. App. 3d 266, 280 N. E. 2d 739.

Finally, plaintiffs contend that the recent case of *Hutson* v. *County of Cook*, First Dist. No. 57789, ... Ill. App. ....., controls the decision in the instant case. This case involved a

tract of land located on Willow Road about one mile east of the property in the instant case. In *Hutson* the court affirmed the trial court in holding the zoning ordinance void and allowing plaintiffs to erect single family residences within an R-4 zoning classification on part of the land, and to build a development including a food store, restaurant and local shops on the other part of their land. It needs no citation of authority to state the common rule that zoning cases must be decided on their own facts and circumstances. A court must make its decision on the basis of the record before it. Aside from this general rule, we believe that there are certain differences which distinguish the cases. In *Hutson* there was evidence that a commercial nursery was operating at the same intersection as the subject property. The height of the building in *Hutson* was to be three stories, whereas the motel in the instant cause would be six stories. Further, the R-4 single family homes would act as a buffer to that development. Only the five foot high berm was to be a buffer for the property involved in the instant case. We therefore conclude that this case cannot be deemed controlling of our instant decision.

We have carefully reviewed the record in the instant case and find that at best there is created a legitimate difference of opinion on the reasonableness of prohibiting the proposed use. Under such circumstances the presumption of validity has not been overcome. (*Avenue State Bank* v. *Village of Oak Park*, 99 Ill. App. 2d 329, 241 N. E. 2d 630.) In view of this finding we need not consider defendants' other contention. Shaping the order of the court to the facts of the particular case (*Schultz* v. *Village of Lisle*, 53 Ill. 2d 39, 289 N. E. 2d 614; *Sinclair Pipeline Co.* v. *Village of Richton Park*, 19 Ill. 2d 370, 167 N. E. 2d 406), we hold that prohibiting plaintiffs' proposed development is reasonably related to the public health, safety, morals and welfare of the community. The judgment is reversed.

REVERSED.

SULLIVAN, *P.J.*, and LORENZ, *J.*, concur.

APPENDIX B.

State of Illinois
Office of
CLERK OF THE SUPREME COURT
Springfield
62706

September 27, 1974

Mr. Jack M. Siegel
Attorney at Law
39 S. LaSalle St.
Chicago, Ill. 60603

No. 46765—The Littlestone Company, an Illinois corporation, et al., etc., petitioners, vs. The County of Cook, a body politic and corporate, et al., respondents. Leave to appeal, Appellate Court, First District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ JUSTIN TAFT
Clerk of the Supreme Court.

APPENDIX C.

COOK COUNTY ZONING ORDINANCE.

A. Section 8.3-3 Permitted Uses—R-3 District, p. 41A

8.3-3 Permitted Uses—R3 District.

Any use permitted in the R1 District.

B. Section 8.3-1 Permitted Uses—R-1 District, pp. 41A, 42A

8.3-1 Permitted Uses—R1 District.

The following uses are permitted in the R1 District:

(1) *Single-family Detached Dwellings.*

(2) *Cemeteries.*

(3) *Educational (Non-boarding) and Cultural Institutions.*

(a) Elementary schools non-boarding.

(b) High-schools, non-boarding.

(c) Public libraries and public art galleries.

(d) Public museums and aquariums.

(4) *Recreational and Social Facilities.*

(a) Athletic fields, non-commercial.

(b) Forest preserves.

(c) Golf courses, but not including commercially operated driving ranges, pitch and putt, miniature or par-three (3) courses.

(d) Grounds of recreational clubs, non commercial, but not including gun clubs and skeet and trap shooting ranges.

(e) Parks and playgrounds.

(f) Polo Clubs.

(g) Grounds of community centers, non-commercial.

(h) Swimming pools, non-commercial.

(i) Tennis clubs.

(5) *Religious Institutions.*

(a) Churches, chapels, temples, and synagogues.

(b) Convents, seminaries, monasteries, and nunneries.

(c) Rectories, parsonages, and parish houses.

(d) Religious retreats.

(6) *Signs,* as regulated by Section 8.12 hereinafter.

(7) *Accessory Uses,* incidental to, and on the same zoning lot as a principal use.

(a) Agricultural buildings and structures.

(b) Athletic fields, playgrounds, and polo fields, including stadiums and grandstands.

(c) Boathouses, private.

(d) Club houses and accessory structures on the grounds of recreational clubs, golf courses, polo and tennis clubs--including the sale therein of sports equipment and the serving of beverages, including alcoholic beverages and food, if incidental to the principal activity.

(e) Garages and carports.

(f) Greenhouses and conservatories, private.

(g) Guest houses, private.

(h) Heliports, private.

(i) Home occupations.

(j) Living quarters, detached, for persons employed on the premises if occupied only by such persons and their immediate family.

(k) Mausoleums, crematories, and columbariums in cemeteries.

(l) Playhouses and summer houses.

(m) Recreational and community center buildings.

(n) Roadside stands, for the display and sale of agricultural products on zoning lots where the principal use is agriculture.

(o) Sewage disposal units, individual, as regulated by Article IV, Section 4.5.

(p) Stables, private.

(q) Storage of building materials and equipment, and temporary buildings for construction purposes, for a period not to exceed the duration of such construction.

(r) Swimming pools and tennis courts, private.

(s) Temporary real estate tract offices for the purpose of conducting the sale of lots of the tract upon which such tract office is located, for a period not to exceed two (2) years.

(t) Tool houses, sheds, and other similar buildings for the storage of domestic supplies

(u) Water systems, individual, as regulated by Article IV, Section 4.5.

(v) Fallout shelters, as regulated in Article IV, Sections 4.4 and 4.9.

Section 9.3-4 Permitted Uses—B-4 District, pp. 95A, 97A, 99A

9.3-4 Permitted Uses—B4 District.

A. Uses permitted in the B4 District are subject to the following conditions:

(1) Dwelling units and lodging rooms, other than those located in a transient hotel or motel, or dwelling units in conjunction with agricultural uses, are not permitted below the second floor.

(2) All goods produced on the premises shall be sold at retail on the premises where produced.

(3) All business, storage, servicing, or processing—except for off-street parking or loading, and establishments of the "drive-in" type offering goods or services directly to customers waiting in parked motor vehicles—shall be conducted within completely enclosed buildings.

(4) All activities involving the production, processing, cleaning, servicing, testing, or repair of ma-

terials, goods, or products shall conform with the performance standards established for the M1 Manufacturing District in Article X of this comprehensive amendment, provided that performance standards shall in every case be applied at the boundaries of the zoning lot on which such activities take place.

(5) The parking of trucks as an accessory use, when used in the conduct of a permitted business listed hereafter in this Section 9.3-4, shall be limited to vehicles of not over 1½ tons capacity when located within 150 feet of a Residence District boundary line.

B. Any use permitted in the B3 District, as set forth in Section 9.3-3, shall be permitted in the B4 District, and in addition, the following uses shall be permitted:

(1) Amusement establishments — bowling alleys, dance halls, gymnasiums, pool halls, skating rinks and swimming pools.

(2) Auction rooms.

(3) Automobile accessory stores.

(4) Automobile service stations—for the retail sale and dispensing of fuel, lubricants, tires, batteries, accessories, and supplies, including installation and minor services customarily incidental thereto; facilities for chassis and gear lubrication and for washing of not more than four (4) vehicles are permitted only if enclosed in a building.

(5) Bicycle sales, rental, and repair stores

(6) Blue-printing and photostating establishments.

(7) Catering establishments.

(8) Clothing and costume rental stores.

(9) Clubs, private (non-profit).

(10) Convention halls.

(11) Dry cleaning establishments, employing not more than four (4) persons in addition to one owner or manager.

(12) Employment agencies.

(13) Exhibition halls.

(14) Exterminating shops.

(15) Feed stores.

(16) Garages—for storage, repair, and servicing, of motor vehicles of not over 1½ tons capacity, but not including body repair, painting, or engine rebuilding.

(17) Greenhouses, retail.

(18) Hotels and motels.

(19) Laboratories—medical and dental.

(20) Launderettes, automatic, self-service only, or hand laundries—employing not more than four (4) persons in addition to one owner or manager.

(21) Laundries, employing not more than four (4) persons in addition to one owner or manager.

(22) Locksmith shops.

(23) Lodges.

(24) Meeting halls.

(25) Motor vehicle sales, of vehicles of not over 1½ tons capacity.

(26) Newspaper distribution agencies, for home delivery and retail trade.

(27) Orthopedic and medical appliance stores, but not including the assembly or manufacture of such articles.

(28) Parking lots, open and other than accessory, for the storage of private passenger automobiles, and subject to the provisions of Section 9.11.

(29) Pawn shops.

(30) Pet shops.

(31) Philanthropic and eleemosynary institutions.

(32) Physical culture and health services—gymnasiums, reducing salons, massage salons, and public baths.

(33) Plumbing showrooms and shops.

(34) Radio and television service and repair shops.

(35) Radio and television studios, stations, and towers, transmitting and receiving.

(36) Recording studios.

(37) Religious institutions—churches, chapels, temples, and synagogues.

(38) Restaurants, including live entertainment and dancing.

(39) Schools—commercial or trade, subject to the provisions of the performance standards established for the M1 District Article X.

(40) Schools—music, dance or business.

(41) Second-hand stores and rummage shops.

(42) Taverns, including live entertainment and dancing.

(43) Taxidermists.

(44) Theaters (indoor).

(45) Undertaking establishments and funeral parlors.

(46) Vending machines—ice and milk sales.

D. Section 9.4-4 Special Uses—B-4 District, p. 101A

9.4-4 Special Uses—B4 District

Any special use allowed in the B3 District may be allowed in the B4 District, subject to the provisions of Article VI, Section 6.9—unless already permitted in Section 9.3-4.

E. Section 9.4-1 Special Uses—B-1 District, p. 100A

9.4-1 Special Uses—B1 District

The following special uses may be allowed in the B1 District, subject to the provisions of Article VI, Section 6.9:

(1) Heliports, commercial.

(2) Land Fill.

(3) Parks.

(4) Planned developments.

(5) Public utility and service uses.

(a) Bus terminals, bus turn-arounds (off-street), bus garages, and bus lots.

(b) Electric substations.

(c) Fire stations.

(d) Gas regulator stations.

(e) Police stations.

(f) Railroad passenger stations.

(g) Railroad rights-of-way, but not including railroad yards and shops other than for passenger purposes.

(h) Telephone transmission equipment buildings, and micro wave relay towers.

(i) Water works, reservoirs, pumping stations, and filtration plants.

(6) Signs in excess of thirty-five (35) feet in height from curb level.

(7) Signs set back less than fifteen (15) feet from the front lot line.

(8) Accessory uses, incidental to, and on the same zoning lot as a principal use.

APPENDIX D.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS,
County Department, Law Division.

THE LITTLESTONE COMPANY, an Illinois corporation, JULIUS OSTROM and ESTELLE H. OSTROM, his wife,
Plaintiffs,

vs.

THE COUNTY OF COOK, a body politic and corporate,
Defendant.

No. 71 L-12880

AMENDED COMPLAINT AT LAW FOR DECLARATORY JUDGMENT.

The plaintiffs, The Littlestone Company, an Illinois corporation, Julius Ostrom and Estelle H. Ostrom, his wife, complaining of the defendant, The County of Cook, a body politic and corporate, state as follows:

1. The plaintiffs, Julius Ostrom and Estelle H. Ostrom, his wife, are the owners of the following described real estate in the County of Cook and State of Illinois, to-wit:

> A tract of land in the North West quarter of Section 20, Township 42 North, Range 12 East of the Third Principal Meridian, described as follows: Commencing at a point in the East line of said North West quarter, 987.53 feet South of the North East corner thereof; thence South along said East line, 282.97 feet to point 19.25 chains South of said North East corner of the North West quarter; thence West parallel with the North line of said North West quarter 24.0 chains; thence North parallel with the East line of

said North West quarter, 12.50 chains; thence East parallel with the North line of said North West quarter, 656.96 feet, thence South parallel with the East line of said North West quarter 537.65 feet, thence easterly to the place of beginning (except that part of said tract described as follows: Beginning at the South West corner of the said tract; thence East along the South line of said tract, 359.36 feet to a point; thence North with an angle of 90 degrees 0 minutes to the left from the preceding line extended, 64.72 feet to a point; thence West with an angle of 90 degrees and 0 minutes to the left from the preceding line extended, 245.13 feet to a point, thence North Westerly with an angle of 11 degrees, 31 minutes and 45 seconds to the right from the preceding line extended, 116.58 feet to a point on the West line of said tract; thence South along the West line with an angle of 101 degrees, 31 minutes and 45 seconds to the left from the preceding line extended 88.02 feet along said West line to the place of beginning), in Cook County, Illinois.

2. The plaintiff, The Littlestone Company, an Illinois corporation, is the contract purchaser and proposed developer of the aforementioned real estate.

3. The defendant, The County of Cook, is a body politic and corporate, by virtue of the laws of the State of Illinois and is charged with the administration of zoning laws of said county.

4. The above property consists of approximately seventeen and ninety-five one-hundredths (17.95) acres located on the northwest corner of Willow Road and Landwehr Road in Northfield Township. The property has a frontage of One Thousand One Hundred Forty-four and sixty-four one-hundredths (1144.64) feet on the North side of Willow Road and a frontage of Two Hundred Fifty-five and one one-hundredth (255.01) feet on the West side of Landwehr Road and is presently zoned R-3 Single Family Residence District under the Zoning Ordinance of the County of Cook.

5. The plaintiffs propose to build three (3) office buildings consisting of five (5) stores each. In addition to the office

buildings, a six (6) story motel building would also be constructed, together with a swimming pool and restaurant facilities. However, such use is not permitted under its present R-3 Single Family Residence District classification, as set forth in the Cook County Zoning Ordinance.

6. On March 8, 1960, the County Commissioners of the County of Cook passed a Comprehensive Amendment to the then existing Cook County Zoning Ordinance which is presently in full force and effect, such amendment having effected a complete re-writing of the Zoning Ordinance previously enacted. That the aforesaid Comprehensive Amendment adopted by the County Commissioners of Cook County provides for classifying, regulating, and restricting the location of trades and industries and the location of buildings designed for specific uses, and regulates and limits the height and bulk of buildings erected or altered, and regulates and limits the intensity of the use of lot areas, courts and other open spaces within and surrounding such buildings and establishes boundaries of districts for the said purpose and prescribes penalties for the violation of its provisions.

7. Under the Comprehensive Amendment to the Cook County Zoning Ordinance classifying said property in an R-3 Single Family Residence District, the plaintiffs are deprived of the use of said property for its highest and best use.

8. The plaintiffs presented their petition before the Zoning Board of Appeals of Cook County on June 4, 1971, seeking to rezone the subject premises from its present zoning, R-3 Single Family Residence District, to a B-4 General Service District, with a special use for a Planned Development.

9. That on the 7th day of September, 1971, the County Commissioners considered the report of the Zoning Board of Appeals and denied the petition of the plaintiffs for rezoning said premises to a B-4 General Service District with a special use for a Planned Development. The plaintiffs, therefore, have exhausted all administrative remedies available to them.

10. That the Fifth and Fourteenth Amendments of the Constitution of the United States of America and Sections Two and Thirteen of Article II of the Constitution of the State of Illinois guarantee that the plaintiffs shall be permitted to the subject property to its highest and best use and the uses permitted under the Comprehensive Amendment, as hereinbefore set forth as applicable to the subject property, prohibits the highest and best use of the land, and in effect, renders the premises useless and valueless; that the plaintiffs are guaranteed the right to use said property for its highest and best use subject only to such burdens and restraints as are necessary in the interest of the public health, safety, comfort morals and general welfare and said ordinance denies them the best use without any bearing on the public health and safety and said plaintiffs cannot develop their property at the full value thereof because of such restrictions.

11. That the Comprehensive Amendment to the Zoning Ordinance of the County of Cook as the same applies to the plaintiffs' property, is contrary to the Constitution of the United States of America and the Constitution of the State of Illinois, insofar as it purports to apply to the premises described herein and is invalid for the following reasons:

(a) That said Ordinance is contrary and does not bear any reasonable relation to, or tend to permit or preserve the public health, comfort, morals and safety or general welfare.

(b) That said Ordinance is arbitrary, discriminatory and unreasonable.

(c) That said Ordinance constitutes the taking of the plaintiffs' property without just compensation or due process of law.

(d) That said Ordinance is confiscatory.

12. The defendant, The County of Cook, by its officers, agents and employees, has threatened and still threatens, to enforce the provisions of the said Zoning Ordinance as aforesaid, against the plaintiffs and the property owned by the plaintiffs and a dispute has arisen between the plaintiffs and the

defendant concerning the plaintiffs' rights. It is therefore desirable and feasible that the Court declare the rights of the parties.

WHEREFORE, the plaintiffs pray:

A. That judgment should be entered herein finding and declaring that the Zoning Ordinance of The County of Cook as the same pertains to the property owned by the plaintiffs in which it is presently zoned R-3 Single Family Residence District is unconstitutional.

B. That the Court enter judgment herein finding and declaring that the plaintiffs or any person claiming by, through, or under the plaintiffs, have a clear legal right to use the above described premises for the purposes set forth in this complaint; namely, a B-4 General Service District with a special use for a Planned Development under the Zoning Ordinance of the County of Cook to permit the construction of three (3) office buildings and a motel and a swimming pool and restaurant facilities.

C. That after the rights of the parties have been declared by this Court, the Court declare and command the defendant, The County of Cook, its agents, servants or employees, charged with the duty of examining plans for building construction in The County of Cook or charged with the duty of examining applications for licenses for uses and businesses in the County of Cook to approve the plaintiffs' application for a B-4 General Service District with a special use for a Planned Development, as described in the amended complaint.

D. That after the rights of the parties hereto have been declared as prayed, and provided that the plaintiffs or any person claiming by, through or under them, otherwise comply with the ordinances of The County of Cook pertaining to the construction of a B-4 General Service District with a special use for a Planned Development, that the Court permanently enjoin the defendant, The County of Cook, its officers, agents, servants and employees from in any way interfering with the plaintiffs so that the plaintiffs shall have the right to develop three (3) office buildings and a motel with a swimming pool and restau-

rant facilities under the B-4 General Service District requirements and with a special use for a Planned Development.

E. That after the Court has declared the rights of the plaintiffs, the Court should retain jurisdiction to issue any and all orders, writs or judgment necessary to enforce its judgment.

/s/ ILLEGIBLE
The Littlestone Company,
an Illinois Corporation.

/s/ JULIUS OSTROM,
Julius Ostrom,
/s/ ESTELLE H. OSTROM,
Estelle H. Ostrom,
his wife.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Illegible being first duly sworn on oath, deposes and says that he is the ..... and the duly authorized agent of The Littlestone Company, an Illinois corporation, one of the plaintiffs named in the foregoing amended complaint; that he has knowledge of the facts, that he has read the foregoing amended complaint, knows the contents thereof, and that the same are true.

/s/ ILLEGIBLE.

Subscribed and sworn to before me this 18th day of February, 1972.

/s/ BEATRICE M. ADELMAN,
Notary Public.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Julius Ostrom and Estelle H. Ostrom, his wife, being first duly sworn on oath, depose and say that they are plaintiffs named in the foregoing amended complaint; that they have knowledge of the facts, that they have read the foregoing amended complaint, know the contents thereof and that the same are true.

/s/ JULIUS OSTROM,
/s/ ESTELLE H. OSTROM.

Subscribed and sworn to before me this 15th day of February 1972.

/s/ DOROTHY R. BOYLES,
Notary Public.

FOL

APPENDIX E.

(Land Use Map)

APPENDIX F.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS,
County Department, Law Division.

THE LITTLESTONE COMPANY, an Illinois corporation, JULIUS OSTROM and ESTELLE H. OSTROM, his wife, *Plaintiffs,*
vs.
THE COUNTY OF COOK, a body politic and corporate, *Defendant.*
No. 71 L 12880

FINAL JUDGMENT ORDER.

This cause coming on to be heard on an amended complaint of the plaintiff for declaratory judgment, and the Court having heard and considered all evidence adduced, both oral and documentary, and having heard and considered the arguments of counsel, and being fully informed in the premises, Finds:

1. That the Court has jurisdiction of the parties hereto and the subject matter hereof.

2. That an actual [illegible]versy exists between the parties hereto and the parties he[illegible]e entitled to a declaration of their rights with respect to said [illegible]troversy pursuant to the provisions of Section 57.1 of the Illinois Civil Practice Act.

3. That the plaintiffs, Julius Ostrum and Estelle H. Ostrum, his wife, are the owners of the following described real estate in the County of Cook and State of Illinois:

> A tract of land in the North West quarter of Section 20, township 42 North, Range 12 East of the Third Principal Meridian, described as follows: Commencing at a point in the East line of said North West quarter, 987.53 feet South of the North East corner thereof; thence South along said East line, 282.97 feet to point 19.25 chains South of said North East corner of the North West quarter; thence West parallel with the North line of said North West quarter 24.0 chains; thence North parallel with the East line of said North West quarter, 12.50 chains; thence East parallel with the North line of said North West quarter, 656.96 feet, thence South parallel with the East line of said North West quarter 537.65 feet, thence easterly to the place of beginning (except that part of said tract described as follows: Beginning at the South West corner of the said tract; thence East along the South line of said tract, 359.36 feet to a point; thence North with an angle of 90 degrees 0 minutes to the left from the preceding line extended, 64.72 feet to a point; thence West with an angle of 90 degrees and 0 minutes to the left from the preceding line extended, 245.13 feet to a point, thence North Westerly with an angle of 11 degrees, 31 minutes and 45 seconds to the right from the preceding line extended, 116.58 feet to a point on the West line of said tract; thence South along the West line with an angle of 101 degrees, 31 minutes and 45 seconds to the left from the preceding line extended 88.02 feet along said West line to the place of beginning), in Cook County, Illinois.

4. That the plaintiff, The Littlestone Company, an Illinois corporation, is the contract purchaser and proposed developer of the aforementioned real estate.

5. That the above-described property is located at the northwest corner of Willow Road and Landwehr Road in Northfield Township in the unincorporated area of Cook County and consists of approximately seventeen and ninety-five one-hundredths (17.95) acres. That the premises were, at the time of

the commencement of this action, zoned R-3 Single Family Residence District under the Zoning Ordinance of the County of Cook.

6. That the defendant herein is the County of Cook, a body politic and corporate. That the intervenor-defendants herein are The Village of Northbrook, a municipal corporation, Village of Glenview, a municipal corporation, Paul Walsh and Benjamin Harris, Allstate Insurance Company, an Illinois corporation, Geroge W. Drymalski and Cecil J. Drymalski.

7. That the issues in this cause are with the plaintiffs and against the defendant and intervenor-defendants.

8. That the plaintiffs propose to construct three (3) office buildings consisting of five (5) stories each. In addition to the office buildings, a six (6) story motel building together with a swimming pool and restaurant facilities. Said development to be in accordance with plans presented as evidence in this proceeding, which plans are specifically incorporated by reference in this decree.

9. That the proposed development is not permitted on the subject property under the terms of the R-3 Single Family Residence District classification, as set forth in the Cook County Zoning Ordinance. That the plaintiffs herein applied for reclassification of the subject property from the R-3 Single Family Residence District, its present zoning, to B-4 General Service District, with a Special Use for a Planned Development, to permit the construction of the proposal as hereinabove described. That said application for rezoning and planned development was denied by the Board of Commissioners of Cook County. The plaintiffs therefore have exhausted all local and administrative remedies available to them.

10. That the highest and best use of the subject property is for the general service planned development of the type and character proposed to be erected by the plaintiffs as hereinabove described.

11. That the Zoning Ordinance of the County of Cook as applied to the subject property, insofar as it prevents the use of the subject property for a general service planned development, is unreasonable, arbitrary, confiscatory, unconstitutional and void and bears no reasonable relationship to the public health, safety, morals and welfare.

12. That the proposed use of a general service planned development, providing for three (3) office buildings and a motel with a swimming pool and restaurant facilities, as indicated on the plans submitted to this Court, is a reasonable use of the subject property and may be permitted.

13. That the application of the provisions of the Cook County Zoning Ordinance contained in the R-3, R-4, R-5, R-6 and B-1, B-2 and B-3 Districts would be unreasonable, arbitrary, confiscatory, unconstitutional and void.

It is Therefore Ordered, Adjudged and Decreed as follows:

A. That the Cook County Zoning Ordinance, insofar as it prevents the use of the plaintiffs' property for a general service planned development, providing for three (3) office buildings and a six (6) story motel building with a swimming pool and restaurant facilities all as shown in exhibits presented to this Court, is void, invalid and of no effect as applied to the subject property.

B. That the plaintiffs, or any persons claiming by, through or under them, are entitled to use the subject property for a general service planned development in substantial compliance with the plans submitted in evidence in this cause.

C. That the County of Cook, and its agents, servants, and employees and each and every one of them, and the intervenor-defendants, their agents, servants and employees and each and every one of them, be and they are hereby enjoined from enforcing the provisions of the Zoning Ordinance of the County of Cook, insofar as said ordinance prevents the use of the subject property as aforesaid, and further the County of Cook is directed to issue to the plaintiffs, or their successors in title,

upon proper application, all necessary permits and licenses for the erection of a general service planned development in the manner herein provided, and that they be further enjoined from interfering with the plaintiffs, and all persons claiming by, through and under them, from utilizing the subject property as hereinabove decreed to be their right.

D. That judgment be and it is hereby entered in favor of the plaintiffs and against the defendant and intervenor-defendants, in accordance with the prayer of the complaint.

E. That this Court shall retain jurisdiction of this cause for the purpose of enforcing the terms of this decree.

F. That this is a final order and no just reason exists for the delay of an appeal, if any.

Enter:

JUDGE EDWARD F. HEALY,
Judge.

Dated:

MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, A.D. 1974

No. 74-798

THE LITTLESTONE COMPANY, an Illinois corporation, JULIUS OSTROM and ESTELLE H. OSTROM, his wife,

Petitioners,

vs.

THE COUNTY OF COOK, a body politic and corporate, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Illinois Appellate Court, First District, Fifth Division

BRIEF FOR RESPONDENTS IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1974

No. 74-798

THE LITTLESTONE COMPANY, an Illinois corporation, JULIUS OSTROM and ESTELLE H. OSTROM, his wife,

Petitioners,

vs.

THE COUNTY OF COOK, a body politic and corporate, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Illinois Appellate Court, First District, Fifth Division

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the Illinois Appellate Court, First District, Fifth Division (App. A of Petition) is reported at 19 Ill. App. 3d 222, 311 N.E. 2d 268. The order of the Illinois Supreme Court denying leave to appeal was entered on September 27, 1974; notice of said denial was sent to all counsel of record on September 27, 1974 (App. B of Petition).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

1. Whether the Cook County Zoning Ordinance, as it applies to the subject property, bears a reasonable relationship to the health, safety or welfare of the community.

2. Whether the petitioners sustained their burden of overcoming the presumptive validity of the Cook County Zoning Ordinance by clear and convincing evidence.

CONSTITUTIONAL AMENDMENTS AND COUNTY ORDINANCES INVOLVED

The Constitutional Amendments alleged to be violated, and certain sections of the Cook County Zoning Ordinance allegedly involved, are set forth at pages 2 and 3 of the Petition and at Appendix C to the Petition.

STATEMENT OF THE CASE

This litigation concerns an application for the rezoning of certain property in the unincorporated area of Cook County in Northfield Township, Illinois. The petitioners Julius Ostrom and Estelle H. Ostrom are the owners of the subject property. The petitioner, The Littlestone Company, is the contract purchaser and proposed developer of the subject property.

The respondents are the County of Cook, a body politic and corporate, surrounding property owners, George W. Drymalski and Cecil J. Drymalski, and two municipalities. The municipalities are the Village of Northbrook, which is contiguous to the subject property, and the Village of Glenview, which is in proximity to the subject property.

The Littlestone Company agreed to acquire the subject property from Julius Ostrom and Estelle H. Ostrom in 1969. The Littlestone Company's obligation to purchase the property is subject to a successful application for rezoning. The purchase price for the property is $220,000. Julius Ostrom and Estelle H. Ostrom had purchased the property in February, 1959 from George W. Drymalski and Cecil J. Drymalski, for $59,000.

The subject property is a tract of land, containing 17.95 acres, which is vacant, except for the residence building in which Julius Ostrom and Estelle H. Ostrom live. It is an irregular tract of land which is roughly L-shaped. The

subject property is presently classified in the R-3 Single Family Zoning District of Cook County in which the minimum lot size is 20,000 square feet.

The subject property lies along the north side of Willow Road and the west side of Landwehr Road, just east of the Tri-State Tollway. There is one vacant tract of land, approximately 38 acres, on the west side of the subject property, which separates the subject property from the Tri-State Tollway. Except for the tollway on the west, the subject property is entirely surrounded by property that is zoned for, and in many cases developed with, single family dwellings. In fact, the petitioners' own land planning expert stated at trial that in the area most significantly related to the subject property there are only single family residences.

The petitioners' land planning expert further stated at trial that east of the tollway, going north, the nearest non-residential zoning or use is a mile and a half from the subject property. He further testified that, going south, the closest non-residential use would be two to three miles to the south of the subject property, and that, therefore, in a straight line from the north to the south from the subject property for about four and a half miles, there is nothing but single family residences or vacant property zoned for single family uses.

To the north of the subject property is the Drymalski property, which consists of 11 acres zoned and used for single family purposes. To the northwest is a single family community known as Citation Lake Estates which has been in the process of continuous development for the past 8 or 9 years. To the immediate north of and touching the subject property is the Landwehr Estates development

which is a single family residential development of half acre lots. To the east of the subject property are a number of other single family developments, including the Stonehedge Subdivision located west of Pfingsten Road on Willow. To the south of the subject property are the Willows East and Willows West single family developments. In addition, there are various single family homes directly east of the subject property on Landwehr Road and directly south on Willow Road.

Directly west of the subject property, dividing the subject property from the Tri-State Tollway are 38 acres which are zoned for single family uses.

The uses west of the tollway are typified by large sites and office development. The trend of commercial development is in a relatively isolated area confined on the west by forest preserve property and on the east by the tollway. Within that area between a quarter and a half mile west of the tollway there are 400 acres which can be developed with commercial and office establishments.

The petitioners desire to construct three five-story office buildings containing a gross area of approximately 240,000 square feet. There would also be a six-story 201 room hotel-motel, parking for approximately 1400 automobiles, and a lake of slightly less than two acres. The office buildings would be 62 feet high; the motel would be approximately 59 feet high.

The petitioners, The Littlestone Company, Julius Ostrom and Estelle H. Ostrom had requested the Board of Commissioners of Cook County to reclassify the subject property from the R-3 Single Family Residence District to the B-4 General Service District, with a Special Use for a Planned Development. The Board of Commissioners of

Cook County, upon consideration of the recommendation of the Cook County Zoning Board of Appeals, denied the petitioners' request.

The petitioners then filed an action against the County of Cook in the Circuit Court of Cook County, Illinois to declare that the R-3 single family zoning of the property, title to which was held by Julius Ostrom and Estelle H. Ostrom, was invalid and unconstitutional, to declare that the petitioners had a right to use their property for a commercial planned development under the B-4 General Service District, consisting of three office buildings, a motel, a swimming pool and restaurant facilities, and to restrain the County and its officials from interfering with that use. The Villages of Northbrook and Glenview, Allstate Insurance Company, Paul Walsh, Benjamin Harris, George W. Drymalski and Cecil J. Drymalski were granted leave to intervene as intervenor-defendants in opposition to the petitioners' complaint. After a trial on the merits, at which both sides presented extensive land planning, real estate valuation and traffic testimony, judgment was entered for the petitioners and against the respondents. (App. F of Petition)

The County and the Intervenors, Village of Northbrook, Village of Glenview, and George W. Drymalski and Cecil J. Drymalski, appealed that judgment to the Appellate Court of Illinois. The Illinois Appellate Court, in reversing the judgment of the Circuit Court of Cook County on April 11, 1974 (App. A of Petition, A21), correctly summarized this traditional zoning case by stating:

> "We have carefully reviewed the record in the instant case and find that at best there is created a legitimate difference of opinion on the reasonableness of prohibiting the proposed use. Under such circum-

> stances the presumption of validity has not been overcome. In view of this finding we need not consider defendants' other contention. Shaping the order of the court to the facts of the particular case, we hold that prohibiting plaintiffs' proposed development is reasonably related to the public health, safety, morals and welfare of the community. The judgment is reversed." (Citations omitted)

The petitioners filed a petition with the Supreme Court of Illinois requesting leave to appeal the judgment of the Appellate Court of Illinois. The Supreme Court of Illinois denied the petition for leave to appeal (App. B of Petition).

ARGUMENT

I.

THERE IS NO CONFLICT OF DECISION AND THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW

The decision of the Appellate Court of Illinois herein (App. A of Petition) does not conflict with this Court's holdings in any of the cases cited in the Petition. These cited cases, in fact, support the respondents' position that the legislative judgment of the County of Cook is presumptively valid, and that the petitioners have not overcome this presumptive validity by clear and convincing evidence. In addition, the cases cited in the Petition demonstrate beyond a doubt that the Petition should be denied for want of an important federal question.

In the landmark case of *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, cited by petitioners, this Court held with the broad view taken by the substantial majority of state court rulings available at the time and declared constitutional the comprehensive zoning ordinance of the City of Euclid and upheld the right of the City of Euclid to zone as residential a long strip of land along a railroad right of way that had been purchased with a view to industrial development. The Court in this noted opinion sustained the view taken by many state courts of last resort, including the State of Illinois, that the exclusion of commercial development from residential districts bears a rational relation to the health, safety and welfare of the community. The Court cited, with approval, pertinent language from *City of Aurora* v. *Burns*, 319 Ill. 84, 93-95, 149

N.E. 784, 788, which had sustained a comprehensive zoning ordinance of the City of Aurora. The Court in *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, 388 acknowledged the presumptive validity of zoning regulations by stating:

> "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control."

A long line of Illinois Supreme Court and Appellate Court decisions both prior to and following the *Euclid* case have continued to uphold zoning ordinances as legitimate exercises of state police power and have continued to acknowledge their presumptive validity.

In *Nectow* v. *Cambridge*, 277 U.S. 183, cited by the petitioners, the ordinance involved had zoned only a strip of the subject parcel of land as residential property, and left the remainder of the property unrestricted. In addition, the strip of land was apparently the only parcel in the entire block, which was zoned as residential property. This Court, in holding that zoning ordinance unconstitutional as it applied to that parcel of property, commented that it does not ordinarily substitute its judgment for that of the "zoning authorities primarily charged with the duty and responsibility of determining the question." (277 U.S. at 188) In the instant case the character of the area surrounding the subject property is predominantly residential, and the entire parcel of property was zoned residential before the petitioners purchased the property.

In the interim since the *Euclid* and *Nectow* cases were decided, this Court has chosen to leave the resolution of zoning issues to the state courts, unless obvious cases of racial discrimination, or other arbitrary and abusive exercises of zoning power, are present.

In *Buchanan* v. *Warley,* 245 U.S. 60, also cited by petitioners, the Court invalidated a city ordinance which prevented a Negro from acquiring real property in a white residential area. The Court based its decision on "the fundamental law enacted in the Fourteenth Amendment of the Constitution preventing state interference with property rights except by due process of law." (245 U.S. at 82) That zoning ordinance had specifically prohibited occupation of housing by "persons of color." The decision in *Buchanan* v. *Warley, supra,* is obviously not applicable to any issues raised by the Petition.

In *Seattle Trust Co.* v. *Roberge,* 278 U.S. 116, cited by petitioners, a Seattle zoning ordinance was at issue which permitted a "philanthropic home for children or for old people" in a district only "when the written consent shall have been obtained of the owners of two-thirds of the property within four hundred (400) feet of the proposed building." (278 U.S. at 118) The Court held that provision of the zoning ordinance unconstitutional because the existing owners were free "to withhold consent for selfish reasons or arbitrarily" and because such delegation of power so attempted is "repugnant to the due process clause of the Fourteenth Amendment." (278 U.S. at 122) No such comparable delegation of power is in any way involved in the instant case, and *Seattle Trust Co.* v. *Roberge, supra,* is wholly inapplicable to the issues before this Court.

In the instant case the County of Cook had denied the petitioners' application to rezone the subject property to permit the petitioners to use their 17.95 acre tract of land for three five-story office buildings and a six story motel, with a swimming pool, a restaurant and parking facilities for 1400 automobiles. At trial respondents herein intro-

duced the testimony of two land planners, a traffic expert, a real estate expert and a neighboring property owner, all tending to demonstrate that the petitioners had failed to overcome the presumption of validity attaching to the Cook County Zoning Ordinance. The trial court, however, declared the Cook County Zoning Ordinance void as it applied to the subject property, and the Illinois Appellate Court then followed a long line of well reasoned Illinois Authority in reversing the judgment of the trial court and in sustaining the validity of the zoning ordinance, and in effect, the judgment of the legislative body. See e.g., *Liberty National Bank* v. *City of Chicago*, 10 Ill. 2d 137, 139 N.E. 2d 235; *Schultz* v. *Village of Lisle*, 53 Ill. 2d 39, 289 N.E. 2d 614. The Supreme Court of Illinois, apparently impressed by the same body of precedent, denied the petitioners' application for leave to appeal.

The opinion of the Illinois Appellate Court does not conflict with, and in fact, follows, prior decisions of this Court. The Petition merely raises issues of state law which have already been litigated and decided by the Illinois Appellate Court and the Supreme Court of Illinois. The Petition's unsubstantiated arguments cannot convert a correct decision in a simple case into an important question of federal law, and the Petition should therefore be denied.

II.

THE DECISION BELOW IS CLEARLY CORRECT

The instant case involves a rather typical zoning matter in which, in the first instance, the Cook County Board of Commissioners was faced with the petitioners' application for a zoning change to permit an excessively intense commercial use of the subject property in an area already

characterized by residential development. The County Board, upon the recommendation of the Cook County Zoning Board of Appeals, denied petitioners' application to put three five-story office buildings, a six story 201 room hotel-motel and parking area for 1400 cars on the subject property. The petitioners then filed this lawsuit in the Circuit Court of Cook County, and the trial court incorrectly determined that the petitioners had met their burden of proof in setting aside the single family zoning restriction on the property, and in permitting the proposed commercial use.

The Appellate Court, however, reversed the judgment of the trial court. Its decision is clearly correct in light of established Illinois precedents and is consistent with the principles of *Euclid v. Ambler Realty Co.*, 272 U.S. 365, and its progeny. The Illinois Supreme Court, relying on the same line of precedent, denied the petition for leave to appeal.

The Appellate Court of Illinois spent several pages of its opinion in reviewing the testimony of each expert witness called by the petitioners and respondents. (App. A of Petition, A5-A12) Moreover, the Appellate Court considered each of the traditional criteria established by the Supreme Court of Illinois in determining the validity of the zoning ordinance in question, including various criteria not contested by petitioners, and did not, as petitioners suggest, dwell on any one factor more than any other. (App. A of Petition, A16-A21).

The Appellate Court, after a review of all the evidence, in light of established zoning criteria, found that the extensive expert testimony on both sides, involving real estate valuation, traffic and land planning issues, created a legit-

imate difference of opinion regarding the reasonableness of the disputed zoning classification. On that basis the Appellate Court concluded that petitioners had failed to prove that the existing zoning is unreasonable *and* that the proposed use is reasonable, as applied to the subject property, and that the presumption of validity attaching to the Cook County Zoning Ordinance had therefore not been overcome by clear and convincing evidence.

Again and again the Supreme Court of Illinois, in keeping with the dictates of *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, has emphasized that when a legitimate dispute exists as to the reasonableness of the zoning classification of a parcel of land, when the restriction is fairly debatable, then the judgment of the corporate authorities of the municipality must prevail. *Trendel* v. *Cook County*, 27 Ill. 2d 155, 161, 188 N.E. 2d 668, 672; *Exchange National Bank* v. *Cook County*, 25 Ill. 2d 434, 440, 185 N.E. 2d 250, 253. The language used in the *Exchange National* decision is typical:

> "Where it appears, from all of the facts, that room exists for a difference of opinion concerning the reasonableness of a classification, the legislative judgment must be conclusive." (25 Ill. 2d at 440).

Contrary to the contentions of the petitioners, the decision in *Hutson* v. *Cook County*, 17 Ill. App. 3d 195, 308 N.E. 2d 65 is also not controlling here. The question of whether the plaintiffs in this case have overcome the presumption of validity attaching to the Cook County Zoning Ordinance by clear and convincing evidence involves facts unique to this case. The proposed development in the *Hutson* case, as the Appellate Court recognized, is entirely different from the proposal in the instant case. Even if there exists a similarity of location or parties, it is obvious that each zoning case is decided on its own facts and cir-

cumstances and that one zoning case can never absolutely control the outcome of another zoning case. *Galt* v. *County of Cook*, 405 Ill. 396, 403, 91 N.E. 2d 395, 399. There were, however, substantial distinctions between the factual settings faced by the trial courts in the *Hutson* case and in the instant case, many of which were delienated in the Appellate Court's opinion (App. A of Petition, A20-A21).

Without any reference to the trial record, petitioners have further attempted to create the false impression that to sustain the subject zoning ordinance would result in a curtailment of economic development in the area surrounding the subject property. Nothing could be further from the truth. First, this is exactly the kind of zoning protection which permits *orderly* and *continued* growth in an area. Second, it is clear from the facts brought forth at trial, including the testimony of one of petitioners' own experts, that there has been considerable single family residential development over the last ten years in the area, and that this trend of development continues to the present.

Petitioners have also argued, without any support in the record, that respondents' expert witnesses agreed that the present R-3 zoning was unreasonable. This is not correct. Respondents' real estate expert in fact testified that the R-3 zoning was reasonable and that the subject property could be developed under R-3 zoning.

In summary, the instant litigation dealt with an attempted rezoning of land for a commercial development that would be totally out of harmony with the character of the neighborhood in which it was to be located, the one factor that Illinois courts have said time after time is the paramount consideration in determining the validity of a zoning decision. The petitioners propose to construct three

five-story office buildings, consisting of approximately 240,000 square feet, a six-story 201 room motel, and a parking area for 1400 cars in the midst of an area that is uniformly zoned and used for single family homes.

The petitioners' evidence, however, never answered the question of what conceivable public interest would be served by this massive concentration of commercial activity in an essentially single family area. In such circumstances the decision of the Illinois Appellate Court was clearly correct and should be permitted to stand.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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